

January 24, 2018

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *In re Connect America Fund*, WC Docket No. 10-90, AU Docket No. 17-182

Dear Ms. Dortch:

On January 22, 2018, Barry Hart, Executive Vice President/CEO, Association of Missouri Electric Cooperatives; Caleb Jones, Vice President, Association of Missouri Electric Cooperatives; Andy Burger,<sup>1</sup> General Manager, Co-Mo Electric Cooperative; Randy Klindt,<sup>2</sup> General Manager, OzarksGo; Sean Vanslyke, General Manager, SEMO Electric Cooperative; Loyd Rice, Administrator of Engineering Services, SEMO Electric Cooperative; Tim Davis, Manager, Pemiscot-Dunklin Electric Cooperative; Jim Bagley,<sup>3</sup> CEO, United Electric Cooperative; Clint Smith, Assistant Manager, Callaway Electric Cooperative; Kirkley Thomas,<sup>4</sup> Vice President of Governmental Affairs, Arkansas Electric Cooperatives, Inc.; Mark McKinney,<sup>5</sup> General Manager/CEO, Jackson County Rural Electric Membership Corporation; Mike Romano, Senior Vice President—Industry Affairs & Business Development, NTCA—The Rural Broadband Association; Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association; Thomas Cohen,<sup>6</sup> Partner, Kelley Drye & Warren LLP, Counsel to

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<sup>1</sup> Mr. Burger did not attend the meeting with Jamie Susskind, Chief of Staff to Commissioner Carr.

<sup>2</sup> Mr. Klindt did not attend the meeting with Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn.

<sup>3</sup> Mr. Bagley did not attend the meetings with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; or Jamie Susskind, Chief of Staff to Commissioner Carr.

<sup>4</sup> Mr. Thomas did not attend the meetings with Amy Bender, Legal Advisor, Wireline, to Commissioner O’Rielly; Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; or Jamie Susskind, Chief of Staff to Commissioner Carr. He joined the other meetings via telephone.

<sup>5</sup> Mr. McKinney joined by telephone.

<sup>6</sup> Mr. Cohen did not attend the meetings with Amy Bender, Legal Advisor, Wireline, to Commissioner O’Rielly; Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; or Jamie Susskind, Chief of Staff to Commissioner Carr.

the American Cable Association; Brian O'Hara,<sup>7</sup> Regulatory Issues Director, National Rural Electric Cooperative Association; Brett Kilbourne, Vice President Policy and General Counsel, Utilities Technology Council; and Karthik Reddy<sup>8</sup> and the undersigned of Jenner & Block LLP met separately with Chairman Ajit Pai, Nicholas Degani, Senior Counsel, and Nirali Patel, Special Counsel to Chairman Pai; Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn; Amy Bender, Legal Advisor, Wireline, to Commissioner O'Rielly; Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; and Jamie Susskind, Chief of Staff to Commissioner Carr to discuss the Connect America Fund Phase II Auction Public Notice<sup>9</sup> and the Connect America Fund Phase II Auction Order and Order on Reconsideration.<sup>10</sup>

In the meetings, we encouraged the Commission to ensure that the Connect America Fund Phase II Auction ("CAF Phase II Auction" or the "Auction") is fair and efficient, as doing so will encourage all providers to participate and help to ensure a successful Auction. Although smaller providers are enthusiastic about participating in the Auction, many are concerned about the Auction's complexity and the ways in which its structure may favor larger providers. Accordingly, we encouraged the Commission to take the following steps to mitigate the complexity of the Auction, and make the Auction simpler and more equitable for smaller providers.

First, we reiterated our concern that package bidding introduces "complexity and bias"<sup>11</sup> into the Auction that would "disproportionately affect small providers."<sup>12</sup> We explained that, to the extent that the Commission permits package bidding, it could minimize the harm to smaller providers by: (1) reducing the minimum bidding unit from census block groups to census blocks;

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<sup>7</sup> Mr. O'Hara did not attend the meeting with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel. He attended the meetings with Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn; and Amy Bender, Legal Advisor, Wireline, to Commissioner O'Rielly via telephone.

<sup>8</sup> Mr. Reddy did not attend the meetings with Chairman Pai, Nicholas Degani, Senior Counsel, and Nirali Patel, Special Counsel to Chairman Pai; Amy Bender, Legal Advisor, Wireline, to Commissioner O'Rielly; Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; or Jamie Susskind, Chief of Staff to Commissioner Carr.

<sup>9</sup> *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, WC Docket No. 10-90, AU Docket No. 17-182, Public Notice, FCC-CIRC1801-03 (Pub. Drft. Jan. 9, 2018) ("Draft PN").

<sup>10</sup> *In re Connect America Fund et al.*, WC Docket No. 10-90 et al., Order and Order on Reconsideration, FCC-CIRC1801-02 (Pub. Drft. Jan. 9, 2018) ("Draft Order").

<sup>11</sup> Dr. Peter Cramton, On the Design of the Connect America Fund Phase II Auction 4 (2017) (attached to Comments of the American Cable Association, WC Docket No. 10-90 (Sept. 18, 2017)).

<sup>12</sup> Reply Comments of the Rural Coalition, WC Docket No. 10-90, at 4 (Oct. 18, 2017).

(2) limiting the overall size of a package bid to the county level; and (3) reducing the minimum scale percentage to 50%. These measures would “strike a more appropriate balance between encouraging bids for scaled projects” and reducing “the potential for gaming and impact . . . on small providers.”<sup>13</sup>

The use of census blocks, instead of census block groups, would help to mitigate package bidding’s bias in favor of large providers. To the extent that package bidding creates the possibility for efficiencies, those efficiencies should be available to all providers. Allowing bidding in smaller units, such as census blocks, will allow all providers, including smaller providers, the opportunity to create a package bid.

We explained that the use of census block groups, which often include extremely high cost census blocks dispersed over a large geographic area, may deter providers from bidding. If smaller wireline bidders, which typically will be focused on more discrete geographic areas, do not have the flexibility to create their own package to, for example, correspond with current service areas, they are less likely to bid. We provided the attached maps to illustrate this significant concern and to underscore the importance of enabling smaller operators to craft more granular bids that are consistent with their business plans and service footprints. As the American Cable Association has noted, small providers have found that though “many census blocks may be economically viable, the census block groups—in which these blocks are found—often are not.”<sup>14</sup> This is because these census block groups often include extremely high cost census blocks, whose per-location reserve price is capped at \$146.10 per month,<sup>15</sup> which is likely far below the actual costs of serving such locations. We noted that if smaller providers are unable to use a more granular bidding unit than census block groups, this could have the unfortunate effect of leaving many interested bidders on the sidelines, census block groups and their census blocks unbid upon, and many unserved locations left unserved, which is in tension with the goals of universal service.

Second, we encouraged the Commission to clarify the scope of the anti-collusion rules. We emphasized that many providers will need the assistance of consultants and advisers to determine the cost to serve an area and participate in the Auction. Unfortunately, given the limited number of qualified consultants, smaller providers may not be able to obtain the assistance that they need if the Commission prohibits experts from providing guidance to

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<sup>13</sup> Letter from Rebekah P. Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (Dec. 20, 2017).

<sup>14</sup> Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (Nov. 21, 2017).

<sup>15</sup> Draft PN at 67 ¶ 206 (“For census blocks with average costs that exceed the extremely high-cost threshold, we will impose a \$146.10 per-location-per-month funding cap so that the reserve price will be equal to \$146.10 multiplied by the number of locations in that census block as determined by the CAM multiplied by 12 months.”)

multiple clients.<sup>16</sup> We highlighted the broad support in the record for a more flexible approach to the anti-collusion rules, whether that includes a safe harbor<sup>17</sup> or an attestation such as that adopted in the Commission-approved New York Broadband Program.<sup>18</sup>

A fair and efficient auction also means that only qualified providers are able to participate. To that end, we expressed support for the Commission's proposal to adopt a 70% take-rate assumption for network engineering,<sup>19</sup> as well as its proposal to rely on the Form 477 to ensure bidders are able to deliver in the higher speed tiers.<sup>20</sup> Nonetheless, we encouraged the Commission to adopt the following additional measures to prevent technically unqualified bidders from winning support and ultimately being unable to deliver the requisite service.

In particular, we encouraged the Commission to require spectrum-based providers to submit propagation maps and wireline providers to provide network maps. To certify that they have evaluated all "technical and marketplace factors"<sup>21</sup> as the Commission proposes, providers will have to perform the due diligence necessary to create propagation maps.<sup>22</sup> We also noted that New York required propagation maps as part of the New York Broadband Program eligibility screen, which demonstrates that such a requirement is feasible and not unduly burdensome.<sup>23</sup> If the Commission is concerned about staff resources, the Commission should require that such maps be submitted in the short form, even if they are not reviewed in detail until a later stage, to ensure that all bidders have conducted the necessary due diligence prior to participating in the Auction. If the Commission declines to require such maps at the short-form stage, it should, at a minimum, require providers to certify that they have conducted the necessary due diligence and have created a network map, including propagation maps, to ensure they will provide the requisite coverage.

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<sup>16</sup> Comments of the Rural Coalition, WC Docket No. 10-90, at 9 (Sept. 18, 2017); Letter from Ross Lieberman, Senior Vice President, American Cable Association, Stephen Coran, Counsel to the Wireless Internet Service Providers Association, & Michael Romano, Senior Vice President, NTCA—The Rural Broadband Association, to Ajit Pai, Chairman, FCC, et al., WC Docket No. 10-90, at 2 (Sept. 15, 2017).

<sup>17</sup> See Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, at 5–6 (Sept. 18, 2017).

<sup>18</sup> Comments of the Rural Coalition, WC Docket No. 10-90, at 11 (Sept. 18, 2017) (citing NYS Broadband Program Office, New NY Broadband Program: Phase 3 Request for Proposal Guidelines 49 (Mar. 30, 2017)).

<sup>19</sup> Draft PN at 30 ¶ 79.

<sup>20</sup> *Id.* at 37 ¶ 98.

<sup>21</sup> *Id.* at 43 ¶ 108.

<sup>22</sup> Comments of the Rural Coalition, WC Docket No. 10-90, at 19 (Sept. 18, 2017).

<sup>23</sup> NYS Broadband Program Office, New NY Broadband Program: Phase 3 Requests for Proposal Guidelines 46 (2017). Though the Commission distinguished the New York auction on the ground that it "does not have a two-step application process," Draft PN at 28 ¶ 74 n.150, the New York auction shows that bidders should perform the necessary diligence to submit maps at the bidding stage.

As a related matter, we requested that the Commission reconsider the proposal in the Draft PN to “eliminate the question asking an applicant to identify the assumptions it intends to make regarding subscription rate and peak period data usage.”<sup>24</sup> The Commission should require the disclosure of these assumptions, as it initially proposed, to ensure that providers make reasonable assumptions about the subscription rate and data usage prior to bidding.<sup>25</sup> Similarly, we encouraged the Commission not to allow satellite providers to bid in any round for more locations than they have the capacity to serve. At a minimum, the Commission should require bidders using satellites to certify that they will not bid for more locations in any round than they have the capacity to serve. Similarly, we expressed concern about gambling finite CAF funding on unproven technologies, and encouraged the Commission to ensure that only providers using technologies that deliver service today participate in the Auction.<sup>26</sup>

Finally, we reiterated our support for the Auction weighting, as it allows all providers the opportunity to compete.<sup>27</sup> In particular, we noted our opposition to reopening the weighting and our support for the Commission’s proposal to deny Hughes Network Systems, LLC’s (“Hughes”) petition for reconsideration asking the Commission to reconsider weights.<sup>28</sup> We explained our concern about Hughes’s effort to tilt the Auction in favor of low-speed, high-latency service, and encouraged the Commission to maintain the weights that it has already adopted.<sup>29</sup>

Please contact the undersigned if you have any questions.

Sincerely,

*/s/ Rebekah P. Goodheart*

Rebekah P. Goodheart  
*Counsel for the Association of Missouri  
Electric Cooperatives, Midwest Energy &  
Communications, HomeWorks, Alger Delta  
& Great Lakes Energy, Indiana Electric*

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<sup>24</sup> Draft PN at 27 ¶ 71.

<sup>25</sup> *Id.* at 32 ¶ 81.

<sup>26</sup> *Id.* at 40 ¶ 103.

<sup>27</sup> Draft Order at 3 ¶ 6.

<sup>28</sup> *See generally* Rural Coalition Opposition to Petition for Reconsideration of Hughes Network Systems, LLC, WC Docket No. 10-90 (May 18, 2017).

<sup>29</sup> Draft Order at 4–5 ¶¶ 9–10.

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*Cooperatives, and Arkansas Electric  
Cooperatives, Inc.*

cc: Chairman Ajit Pai  
Nicholas Degani  
Nirali Patel  
Claude Aiken  
Amy Bender  
Travis Litman  
Jamie Susskind

Attachment





